

JAN 18 2018

BEFORE THE BOARD OF EDUCATIONAL EXAMINERS  
OF THE STATE OF IOWA

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In the matter of:	)	BOEE Case No. <del>17-38</del> 17-39
	)	Folder No. 999700
	)	
Benjamin Burzacott,	)	<b>SETTLEMENT AGREEMENT</b>
	)	<b>AND FINAL ORDER</b>
Respondent.	)	

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In accordance with the provisions of Iowa Code sections 17A.12(5) and 272.2(4) and 282 Iowa Administrative Code (IAC) rule 11.4(6), and with full knowledge of the right to demand a formal hearing before the Board upon the pending complaint prior to the imposition of sanction upon his license, the Respondent expressly waives the right to a disciplinary hearing and notifies the Board of his desire to resolve the pending complaint through means of informal disposition.

The Respondent concedes the jurisdiction of the Board for all issues relevant hereto and voluntarily consents to the State's counsel presenting this agreement to the Board with the terms provided. If the Board does not accept the terms of this agreement, the disciplinary hearing will be rescheduled and the stipulations contained herein are not binding upon the Respondent and will not be presented against him at the time of hearing without further agreement of the Respondent.

Board approval of this settlement shall constitute resolution of this matter and will be entered as a FINAL ORDER of the Board.

**STIPULATIONS**

1. Respondent holds a Standard License (Folder No. 9997000) with the following endorsements: K-8 Physical Education; K-12 Athletic Coach; 5-12 Health; 5-12 Physical Education. Respondent's license is current and will next expire on May 31, 2021. Respondent also has a Class B License which expires June 30, 2018 with the following endorsements: 5-12 Instructional Strategist I: Mild/Moderate.

2. Respondent was employed as teacher by the Winterset Community School District.

3. The Board of Educational Examiners received a complaint against Respondent alleging a violation of the standards of ethics and practices as defined by IAC 282 Chapter 25.

4. The Board found probable cause to proceed to hearing based upon the facts set forth herein and delineated in further detail within the complaint and investigation file compiled by the Board.

5. The Board found probable cause to charge Respondent with the following violation of the Board's standards of ethics and practices:

- a. **COUNT I** – Respondent is charged with abandoning a written professional employment contract without prior unconditional release by the employer, in violation of Board rule 282 Iowa Administrative Code 25.3(5)(a)(3).

6. The Board issued a Notice of Hearing and Statement of Charges. Hearing in this matter was scheduled for June 21, 2017. The Parties agreed to continue the hearing pending approval of this Settlement Agreement and Final Order.

7. Investigation revealed that Respondent had signed an employment contract to be a teacher at the School District during the 2016-2017 school year. Thereafter, Respondent submitted a letter to the School District resigning from his position effective immediately. Respondent did not obtain a release from the School District prior to his resignation, as required by 282 IAC 25.3(5)(b)(1), and did not provide notice to the School District in accordance with 282 IAC 25.3(5)(b)(2).

8. Therefore, Respondent abandoned a written professional employment contract without prior unconditional release, in violation of Board rule 282 Iowa Administrative Code 25.3(5)(a)(3). The effect of Respondent's actions on the School District was exacerbated by the timing of his resignation during the school year.

### SETTLEMENT AGREEMENT

10. This Settlement Agreement and Final Order constitutes the final resolution of a contested case proceeding and shall have the force and effect of a disciplinary order entered following a contested case hearing.

11. In order to resolve this matter without proceeding to hearing, Respondent agrees to accept a **WRITTEN REPRIMAND** issued by the Board of Educational Examiners.

12. Complainant consents to the sanction accepted by Respondent.

11/20/17  
Date

BENJAMIN BURZACOTT  
BENJAMIN BURZACOTT, Respondent

11/20/17  
Date

SUSIE MEADE  
SUSIE MEADE, SUPERINTENDENT  
WINTERSSET COMMUNITY SCHOOL  
DISTRICT, Complainant

### LICENSEE DECLARATION

I understand that this settlement agreement is subject to the approval of the Board and will have no force or effect if it is not accepted by the Board.


I understand Winterset's counsel will present this Agreement to the Administrative Law Judge and/or Board *ex parte*.

I agree to comply with the requirements set forth in the stipulations and settlement agreement, and understand that my failure to do so can result in additional discipline of my practitioner licenses.

I understand that this Settlement Agreement and Final Order is a public record, which will become part of my permanent licensure file and will be available for public inspection and reproduction.

I understand that my name will be added to the national clearinghouse database kept by the National Association of State Directors of Teacher Education and Certification (NASDTEC).

11/20/17  
Date

  
Benjamin Burzacott, Respondent

## ORDER

IT IS THE FINAL ORDER OF THE IOWA BOARD OF EDUCATIONAL EXAMINERS THAT:

1. The conduct with which Respondent has been charged constitutes a violation of the Code of Professional Conduct and Ethics governing the teaching profession. Respondent is REPRIMANDED for the charged conduct.

2. In determining the appropriate sanction to impose in this case, the Board has considered the nature and seriousness of the allegations as well as mitigating circumstances.

Dated this 9<sup>th</sup> day of February, <sup>2018</sup>~~2017~~.



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Ann Lebo, Executive Director  
Iowa Board of Educational Examiners

Copies to:

Andrew J. Bracken, Attorney for Complainant, Ahlers & Cooney, PC, 100 Court Ave., Suite 600, Des Moines, IA 50309 (First Class Mail)

Benjamin Burzacott, Respondent, 505 2nd Street SE, Altoona, IA 50009 (First Class Mail)

**BEFORE THE BOARD OF EDUCATIONAL EXAMINERS  
OF THE STATE OF IOWA**

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In the matter of	)	Case No. 17-39
	)	Folder No. 999700
<b>BENJAMIN S. BURZACOTT,</b>	)	
	)	<b>NOTICE OF HEARING</b>
Respondent.	)	<b>AND STATEMENT OF CHARGES</b>

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**YOU ARE HEREBY NOTIFIED** that the Iowa Board of Educational Examiners, exercising the jurisdiction conferred by Iowa Code chapters 17A and 272, has found probable cause of a violation of Board rules and ordered this matter scheduled for hearing.

**A. TIME, PLACE AND NATURE OF HEARING**

1. Hearing will be held on Wednesday, June 21, 2017, before Administrative Law Judge Margaret LaMarche, acting on behalf of the Iowa Board of Educational Examiners. The hearing shall begin at 1:00 p.m. in Department of Inspections and Appeals, Wallace State Office Bldg, Third Floor, 502 E. 9<sup>th</sup> Street (East 9th and Grand Avenue), Des Moines, Iowa. You should report to the third floor Iowa Department of Inspections and Appeals' (DIA) receptionist prior to 1:00 p.m. to obtain the room assignment.

2. Answer. Within twenty (20) days of the date of service of this Notice of Hearing, you are required to file an Answer specifically admitting, denying, or otherwise responding to the allegations included within the Factual Allegations. In that Answer, you should also state whether you will require an adjustment of the date and time of the hearing. A copy of the Answer shall be provided by the Respondent to the Complainant and the Board identified below.

3. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 282 Iowa Administrative Code (IAC) chapter 11. At hearing, you may appear personally or be represented by an attorney, at your own expense. You will be allowed the opportunity to respond to the charges against you. Each party will be allowed to testify, examine and cross-examine witnesses, and present documentary evidence. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence. If you need to request an alternative time or date for hearing, you must comply with the requirements of 282 IAC 11.19.

If either party wishes to present telephonic testimony or to participate in the hearing by telephone, arrangements must be made at least ten (10) days in advance of the hearing date by filing a written request with the presiding Administrative Law Judge, Department of Inspections and Appeals, Wallace State Office Building, Des Moines, Iowa 50319, or by faxing a written request to (515) 281-4477. A copy of the request for telephonic testimony must be served on the Board and all parties. Any

resistance to the request for telephone testimony must be filed within five (5) days of service of the notice.

4. Pre-hearing conference. Either party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board rules regarding pre-hearing conferences are found in 282 IAC 11.18.

5. Prosecution. The Complainant is responsible for prosecuting and representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to the Complainant at the following address:

Winterset Community School District  
110 West Washington Street  
Winterset, Iowa 50273

6. Communications. You may not contact Board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing or the pending charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve on all parties in the case. You should direct any questions about this proceeding to Ann Lebo, the Board's Executive Director, at (515) 281-5849.

## **B. SECTIONS OF STATUTES AND RULES INVOLVED**

### **Count I**

7. Respondent is charged with abandoning a written professional employment contract without prior unconditional release by the employer, in violation of Board rule 282 IAC 25.3(5)(a)(3).

## **C. JURISDICTION AND LEGAL AUTHORITY**

8. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A and 272. If any of the allegations against you are proven at hearing, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A and 272, and 282 IAC chapter 11.

## **D. FACTUAL CIRCUMSTANCES**

9. Respondent holds a STANDARD LICENSE (FOLDER # 999700) with the following endorsement: 5-12 Instructional Strategist I: Mild/Moderate; 5012 Health, K-8 Physical Education; 5-12 Physical Education and K-12 Athletic Coach. Respondent's license is current and will next expire on May 31, 2021.

10. Respondent was employed with Winterset Community School District. Respondent remained in his position until his resignation.

11. On February 27, 2017, the Board of Educational Examiners received a complaint against Respondent alleging a violation of the Code of Ethics. On April 7, 2017, the Board found probable cause to proceed to hearing based upon the facts set forth herein and delineated in further detail within the complaint and investigation file compiled by the Board.

12. Investigation revealed Respondent submitted a notice of resignation on January 6, 2017, which was effective on February 10, 2017.

13. Respondent did not obtain a release from Winterset Community School District prior to his resignation, as required by 282 IAC 25.3(5)(b)(1), and did not provide notice to the District in accordance with 282 IAC 25.3(5)(b)(2).

#### **E. SETTLEMENT**

14. This matter may be resolved by surrender of your license or an agreement to accept a lesser sanction. The procedural rules governing the Board's settlement process are found at 282 IAC 11.4(6). If you are interested in pursuing settlement of this matter, please contact the Complainant identified in Section A, above.

Dated this 27<sup>th</sup> day of April, 2017.



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Dr. Ann Lebo, Executive Director  
Iowa Board of Educational Examiners

Copies to:

Benjamin Burzacott (first-class mail and restricted certified mail)  
RESPONDENT

Winterset Community School District (electronic mail)  
COMPLAINANT

Andrew J. Bracken (electronic mail)  
ATTORNEY FOR COMPLAINANT